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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/500,141	07/08/2004	Toru Nishibayashi	040243	1413
23850	7590	06/30/2006	EXAMINER	
ARMSTRONG, KRATZ, QUINTOS, HANSON & BROOKS, LLP 1725 K STREET, NW SUITE 1000 WASHINGTON, DC 20006			ALI, SHUMAYA B	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 06/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/500,141

Applicant(s)

NISHIBAYASHI ET AL.

Examiner

Shumaya B. Ali

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 4/5/06.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 10-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 10-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>detailed action</u> .                  |

***Response to Amendment***

Amendment to claims filed on 4/5/06 is acknowledged. Currently claims 1-5,10-20 are pending in the application.

***Response to Arguments***

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1,2, 10-13,18-20 rejected under 35 U.S.C. 102(b) as being anticipated by Gupte et al. US Patent No. 5,575,280.**

3. **As to claim 1, Gupte et al. disclose** a powder inhalation device in figures 1-4 comprising: a housing (9), a supply member (1) for holding a powdered drug for a large number of doses and having a drug discharge aperture (**aperture is inherent through conical section 1c**) at its bottom surface; a drug carrier (3), to which the powdered drug is supplied from the drug discharge aperture of the supply member, and having on its upper surface a measuring

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recess (4) that has volume equivalent to one dose of the drug; and an operation member (2) disposed so as to move freely back and forth, and operate the drug carrier the drug carrier moving in contact with the bottom surface of the supply member to carry the powdered drug loaded into the measuring recess from the position of the drug discharge aperture to an air inhalation channel (6), wherein the drug carrier is supported pivotable in the housing so that the measuring recess reciprocates in a circular manner (**as seen in figure 3 and 4, rotation of device 3 containing cup/recess 4, see also col.4 lines 5-10, 51-52**) relative to the drug discharge aperture of the supply member, by pivoting the drug carrier.

4. **As to claim 2, Gupte et al. disclose** wherein the measuring recess is located at a position between the center of the pivotal movement of the drug carrier and the point at which the operation member engages the drug carrier (**see fig.1**).

5. **As to claims 10,18, Gupte et al. disclose** the powder inhalator according to claim 2, wherein conductivity is imparted to the supply member, the drug carrier and the operation member (**supply member and drug carrier and the operation member are taught by Gupte et al., therefore, the structures are inherently capable of meeting the claimed limitation**).

6. **As to claim 11-13,19-20, Gupte et al. disclose** The powder inhalator according to claim 2, wherein the measuring recess is a spherical concave shape and provided with a bottom (**see fig.1**).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. **Claims 3-5,14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gupte et al. US Patent No. 5,575,280**
2. **As to claims 3,14, Gupte et al. disclose** wherein the operation member is a pushbutton **(obvious over recitation “manually actuatable”)** and the operation member is pressed to move the measuring recess into the air inhalation channel.
3. **As to claim 4,15, Gupte et al. disclose** wherein electrical conductivity is imparted to the supply member, the drug carrier and the operation member, the drug carrier and the operation member, so as to leak static electricity **(supply member and drug carrier and the operation member are taught by Gupte et al., therefore, the structures are inherently capable of meeting the claimed limitation, see col.4 lines 39-46, 58-61).**
4. **As to claim 5, Gupte et al. disclose** the powder inhalator according to claim 4, wherein the measuring recess is a spherical concave shape and provided with a bottom **(see fig.1).**
5. **As to claim 16,17, Gupte et al. disclose** the powder inhalator according to claim 15, wherein the measuring recess is a spherical concave shape and provided with a bottom **(see fig.1).**

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

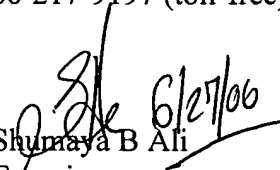
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

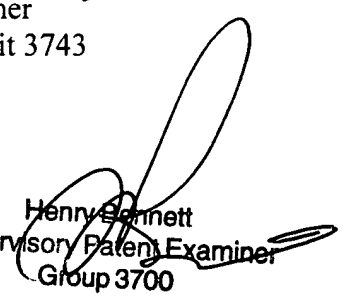
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shumaya B. Ali whose telephone number is 571-272-6088. The examiner can normally be reached on M-F 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Shumaya B Ali  
Examiner  
Art Unit 3743

  
Henry Bennett  
Supervisor Patent Examiner  
Group 3700